WP(C) 5748/2006
BEFORE
THE HON'BLE MR. JUSTICE B.K.SHARMA

JUDGMENT AND ORDER (ORAL)

Both the writ petitions pertaining to the same matter have been heard together a nd are being disposed of by this common judgment and order.

2. The petitioners aspiring for appointment as Mondal under the respondents have invoked the writ jurisdiction of this Court praying for a direction to the respondents to accord necessary approval to the select list prepared for the pu rpose of appointment of Mondal. According to the petitioners, they are the sele cted candidates.

3. Briefly stated the facts leading to the filing of the writ petitions are that the Government of Assam in the Revenue (LR) Department by its Annexure-'A' letter dated13.1.2006 issued under the signature of the Joint Secretary to the Government of Assam and addressed to all the Deputy Commissioners of the distric ts throughout the State, except Karimganj and Bongaigaon districts conveyed the approval of the Governor of Assam for filling up of 690 vacant posts of Mondal w ith district-wise breakup indicated in the enclosure. In the present case, we a re concerned with the district of Udalguri.

4. By the said letter, a specific direction was issued in respect of the di stricts covered by B.T.A.D. area namely, Kokrajhar, Bongaigaon, Barpeta, Nalbari and Kamrup. By the said letter, it was provided that so far as B.T.A.D. distr icts are concerned, the Deputy Commissioners of Kokrajhar, Bongaigaon, Barpeta, Nalbari, Kokrajhar and Darrang will ascertain the vacancy position of the post o f Mondals in 4 (four) BTAD districts in consultation with the Deputy Commission ers of Baska, Chirang and Udalguri. It was further provided that once the positi on was known, the B.T.A.D. Deputy Commissioners would take necessary action for appointment as per existing procedure.

5. Pursuant to the direction contained in the said letter dated 13.1.2006, the Deputy Commissioner, Udalguri initiated the process for selection and appoin tment of Mondal. It will be pertinent to mention here that the copy of the afor esaid letter dated 13.1.2006 was also endorsed to the Principal Secretary, B.T.A .D. Kokrajhar. Thus, the B.T.A.D. was aware of the steps to be taken in the ma tter as per the direction contained in the said letter dated 13.1.2006.

6. By Annexure-'B' W.T. Message dated 3.2.2006 issued by the Secretary to t he Government of Assam in the Revenue Department and addressed to the jurisdict ional Deputy Commissioners, a direction was issued to take necessary steps witho ut any further delay to fill up the vacant posts of Mondal. A direction was also issued to inform the Government about the action taken.

7. After the aforesaid decision to fill up the vacant posts of Mondal throu ghout the State of Assam excluding the districts of Bongaigaon and Karimganj, th e Deputy Commissioner, Udalguri took necessary steps for filling up the vacant p osts. The petitioners, who responded to the employment notice and upon acceptanc e of their candidatures, were invited for interview in which they duly appeared . Thereafter, the Deputy Commissioner, Udalguri prepared the select list, copy of which is annexed to the writ petition as Annexure-'D'.

8. After the aforesaid preparation of the select list, when no process was initiated towards appointment of the selected candidates, the petitioners, who c laimed to have been selected, made Annexure-'E' representation to the Deputy Chi ef, B.T.A.D. Kokrajhar on 7.7.2006 praying for approval of the appointment in a cceptance of the select list. However, there being no response, the petitioners

have filed the instant writ petition for appropriate relief.

9. The Respondent No.2 i.e. the Bodoland Territorial Council represented by the Principal Secretary, has filed an affidavit-in-opposition, in which the only contention raised is that the Deputy Commissioners of the districts carried out the selection without prior approval of the appropriate authority of the B.T.A.D., now B.T.C. It has been contended that since the department of Land Revenue is one of the transferred subject to B.T.C., and the power of appointment to Grade-III and Grade-IV posts vests with the B.T.C., the Deputy Commissioner, Udalguri could not have made the selection without first obtaining the approval of the B.T.C.

10. The Respondent No.3 i.e. the Deputy Commissioner, Udalguri has also filed an affidavit justifying the selection made by him. Referring to the Government directives about which mention has been made above, it is the stand of the Deputy Commissioner that his action towards making the selection was as per the Government direction and that the selection was carried out by observing all necessary and required formalities. It has been stated that the Deputy Commissioner being the appointing authority, there was nothing wrong in making the selection as per rules.

11. The petitioner has filed an additional affidavit bringing on record the order dated 13.6.2006 passed by the Deputy Commissioner, Kokrajhar. The order was issued in terms of the order passed by this Court in the writ petitions mentioned therein. The petitioner has also brought on record the judgment and order dated 7.8.2003 passed by this Court in the writ appeal being W.A. No.3/2002. It is the stand of the petitioner that apart from the writ petition about which mention has been made in the order dated 13.6.2006, the B.T.A.D. authority has also issued orders appointing Mondal pursuant to the order passed by the Division Bench of this Court in Writ Appeal No.3/2002.

12. By bringing the aforesaid materials on record, it has been contended by the petitioners that the plea taken by the B.T.A.D. about required approval is not tenable. According to the petitioners, the BTAD authority having made appointment to the posts of Mondal in the past, there is no impediment towards implementation of the select list prepared by the Deputy Commissioner, Udalguri.

13. I have heard Mr. D. Mazumdar, learned counsel for the petitioners as well as Mr. K. Das, learned Standing Counsel, B.T.C. I have also heard Ms R. Chakraborty, learned State counsel.

14. It will be appropriate to mention here that this Court noticing the plea of the B.T.C. that the Deputy Commissioner resorted to selection in question without approval of the B.T.C., by its order dated 10.1.2007 observed that absence of prior approval to the initiation of the selection process, prima facie, is a curable irregularity. Upon noticing that, Mr. Das, learned Standing Counsel, B.T.A.D. was requested to obtain instructions in the matter. He has since obtained the instructions from the B.T.C. As per his instructions, there being no approval towards selection, the Deputy Commissioner ought not to have made the selection.

15. Mr. D. Mazumdar, learned counsel for the petitioners submits that since the selection has been carried out by the Deputy Commissioner as per the directives of the Government, the approval, about which the B.T.C. has indicated, may not be fatal. He submits that even if any approval is required, the B.T.C. is empowered to accord ex-post facto approval to the selection. He submits that in these hard days of employment, the technicalities should not stand on the way towards appointment, more so, when the selection in question has been conducted following due procedure and as per rules.

16. Mr. Das, learned Standing Counsel, B.T.A.D., on the other hand, submits that since necessary approval of the B.T.A.D. was not obtained, the very initiation of the selection process by the Deputy Commissioner was wrong and accordingly, the B.T.C. cannot act upon the selection so made. Ms R. Chakraborty, learned State counsel submits that since the Deputy Commissioner has carried out the selection as per the directives of the State Government and in absence of any allegation of any irregularity and/or illegality committed in conducting the selection, mere technical plea may not stand on the way towards materialization of the selection made by the Deputy Commissioner.

17. I have considered the submissions made by the learned counsel for the parties as well as materials on record. There is no dispute that the Deputy Commissioner of the district carried out the selection as per the direction of the State Government. As noted above, a copy of Annexure-'A' letter dated 13.1.2006 issued by the Government of Assam in the Revenue (LR) Department and addressed to the respective Deputy Commissioners of the districts was also endorsed to the Principal Secretary, B.T.A.D. Kokrajhar. Thus, it cannot be said that the B.T.C. was unaware of the process to be initiated by the Deputy Commissioner. There being no objection to the process of selection initiated and completed by the Deputy Commissioner, and although there was no express approval to the same, but as submitted by Mr. D. Mazumdar, learned counsel for the petitioners, there was tacit approval in respect of the same. In the case of Union of India v. G.N. Tiwari and others, reported in AIR 1986 SC 348, dealing with the fact of officiation on a cadre post, but not following the requirement of approval of the same by the Central Government, the Apex Court, having regard to the fact that the particular officer continued to officiate under the very nose of the Central Government, observed that such officiation had the tacit approval of the Central Government. Accordingly, the consequential benefit was granted to the said officer as well.

18. In the instant case, the direction for conducting the selection, as contained in the Annexure-'A' letter dated 13.1.2006 was within the knowledge of the authorities of the B.T.C. It cannot be said that they were unaware of the selection process initiated and completed by the Deputy Commissioner of the districts. There is also no dispute that it is the Deputy Commissioner, who is the appointing authority. Thus, the B.T.C. allowed the things to happen and after completion of the selection has taken the plea that there being no approval towards conducting the selection, if cannot be acted upon.

19. As has been observed by this Court in its proceeding on 10.1.2007, even if the prior approval of the B.T.C. was absent, same is a curable defect. In the instant case, such approval shall be deemed to have been granted and/or tacit approval of the B.T.C. should be deemed to be there in view of the attending facts and circumstances. Even otherwise also, the B.T.C. is not precluded from granting ex-post facto approval, more particularly, there being nothing to indicate that the selection has been conducted illegally.

20. Mr. Mazumdar, learned counsel for the petitioners has placed reliance on the decision of the Apex Court, as reported in (1999) 7 SCC 645 (Graphite India Ltd. and another v. Durgapur Projects Ltd. and others). This case has been referred to, to contend that there is nothing to show that the requirement is the prior approval in respect of the selection conducted by the Deputy Commissioner. According to him, if any approval to the selection made by the Deputy Commissioner is required, the same can be granted by the B.T.C. even now.

21. The aforesaid decision was in respect of a particular provision. There was nothing to indicate about the requirement of prior approval. In the instant case also, nothing has been shown towards requirement of prior approval. Be that as it may, since the selection has been conducted by the Deputy Commissioner of the district as per the direction of the State Government, necessary approval

can be accorded even now by the B.T.C.

22. The only apprehension expressed by the B.T.C. in the affidavit is that if the present selection is acted upon in that case, the power and jurisdiction of the B.T.C. authorities would stand transgressed. It is the apprehension of the B.T.A.D. that in the event of allowing to make appointment on the basis of the selection in question, necessary consultation and/or approval may not be taken from the B.T.A.D. in respect of other selections as well. It is made clear that the present case will not be a precedent for any other case pertaining to B.T.C.

23. In view of the above, the writ petitions are allowed. Direction is issued to the B.T.C. to act upon the select list by granting necessary approval. Entire exercise shall be carried out as expeditiously as possible, preferably within 3 (three) months from the date of furnishing a certified copy of this judgment and order. Necessary proposal for approval etc. shall be forwarded by the Deputy Commissioner, Udalguri to the B.T.C. without any delay.

24. Writ petitions are allowed, without, however, any order as to costs.